



Notebook

BY THE RIVERS OF BABYLON

A century ago, close to one-third of Baghdad's population was Jewish. Today, just five Jews remain. We explore the story of Jews in Iraq, from Nahum the prophet to a Jerusalemite grandmother who became the unlikely champion of kidnapped Yazidi girls.

By **Israel Story**

November 19, 2019 • 12:00 AM



The issue of Israel's rights in the West Bank under international law, as simple as it sounds, conceals a complex and extensive web of historic, legal, military and political issues that, for many years, have engaged and continue to engage the parties to the conflict, as well as the international community as a whole.

This article will briefly analyze the three major elements defining Israel's rights in the West Bank.

Firstly, and underscoring all other considerations, are the international legal rights emanating from the indigenous and historic claims of the Jewish people in the area as a whole, virtually from time immemorial. These rights were acknowledged in 1917 by the Balfour Declaration's promise of a national home for the Jews in Palestine, and subsequently recognized internationally and encapsulated into international law through a series of international instruments.

Secondly, Israel's legal rights following the 1967 Six-Day War, as the power administering the West Bank areas of Judea and Samaria (so described in the [U.N. 1947 Partition Resolution 181](#)), and the concomitant, unique sui genesis status of the area.

Thirdly, Israel's rights under international law following the 1993-1995 Oslo Accords between Israel and the PLO, and especially the 1995 Interim Agreement, (commonly known as Oslo 2) which established a unique territorial arrangement as a form of *lex specialis*, that divided the control and governance of the West Bank areas between a Palestinian Authority established for that purpose, and Israel.

Israel's rights in the West Bank areas of Judea and Samaria did not originate with Israel's attaining control of the area following the 1967 Six-Day War.

Long before, the [Balfour Declaration](#) issued by the British government in 1917 acknowledged the indigenous presence and historic aspirations of the Jewish people to reestablish their historic national home in Palestine. While legally the Balfour Declaration, in and of itself, was a unilateral governmental declaration, it received international legal acknowledgement and validity in a series of instruments, commencing with the 1920 [San Remo Conference](#) and Declaration by the Supreme Council of the Principal Allied Powers. San Remo encapsulated the content of the Balfour Declaration into the post-World War I arrangements dividing the former Ottoman Empire. In this way, the Principal Allied Powers finalized the territorial dispositions regarding the Jewish people in respect to Palestine and the Arabs in respect to Mesopotamia (Iraq), Syria, and Lebanon.

The San Remo Declaration stated inter alia that:

“The mandatory will be responsible for putting into effect the declaration originally made on the 8th [2nd] of November, 1917, by the British Government, and adopted by other Allied Powers, in favour of the establishment in Palestine of a national home for the Jewish people ...”

This was incorporated into Article 95 of the (unratified) [Treaty of Sèvres](#) of Aug. 10, 1920, and subsequently in the Preamble and Article 2 of the [Mandate for Palestine](#) approved by the [Council of the League of Nations](#) on July 24, 1922:

“The Mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble, and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.”

The continued validity of these foundational legal rights encapsulated in the various international instruments predating the establishment of the United Nations was also assured under **Article 80 of the United Nations Charter**:

“... nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.”

The second element defining Israel's rights under international law in the West Bank areas of Judea and Samaria relates to the period following the 1967 Six-Day War, subsequent to Jordan's participation in the combined military action against Israel, in concert with Egypt and Syria. During this conflict Israel attained control of the areas of Judea and Samaria and established a military administration to govern the local population, pursuant to the accepted norms and requirements of international law.

However, the issue of Israel's international rights in administering the area was complex in light of the unique legal and political status of the territory.

In classical situations of belligerent occupation of the territory of a sovereign state, the rights and obligations vis-a-vis the territory and the local population are set out in the **1907 Hague Regulations of Land Warfare** and the 1949 **Fourth Geneva Convention** on the Protection of Civilian Persons in Time of War.

These instruments prescribe clear norms of behavior between an occupier and the local population as to the rights and duties involved in administering the area, protecting the forces of the occupier and respecting the humanitarian rights of the local population. Such norms cover issues of property, respect for local law and private property rights, ensuring public order and safety, and respecting the territorial rights of the sovereign pending settlement of the dispute.

With regard to the West Bank areas, the legal situation was not the classical situation of belligerent occupation of the land of a sovereign state. This irregularity stemmed from the fact that Jordan was not considered by the international community as having attained legitimate sovereign rights over the areas of Judea and Samaria, following its 1950 unrecognized annexation of the areas. As such, from the legal point of view, since there existed no legitimate sovereign power, a sui generis situation existed in which the classic laws of occupation were not legally applicable.

Israel's status, as explained by its then Military Advocate General, **Meir Shamgar** (later to become Israel's attorney general and chief justice), was:

“The territorial position is ... sui generis, and the Israeli government tried therefore to distinguish between theoretical juridical and political problems on the one hand, and the observance of the humanitarian provisions of the Fourth Geneva Convention on the other hand.”

From the start, Israel distinguished between the unique nature and status of the territory on the one hand, and accepted and requisite international obligations vis-a-vis the local population in the day-to-

day administration of the territory, on the other hand, pending a peaceful solution regarding its final status.

Concomitant with its assuming control in June 1967 Israel committed itself, through a series of **military proclamations** and orders to act in accordance with the relevant norms of international law in all matters including property, respecting existing local legislation, and other general provisions.

In the same context, without officially acknowledging the formal applicability of the Fourth Geneva Convention to the territories, which would have been tantamount to recognizing that the territory was Jordanian, Israel committed itself to apply vis-a-vis the local population, the humanitarian provisions of the Fourth Geneva Convention.

Pursuant to Article 55 of the 1907 Hague Regulations dealing with the issue of property, Israel, as “administrator and usufructuary,” maintained the right to use public, non-privately owned land and property, pending the final outcome of the dispute.

This premise served as the basis for Israel’s settlement policy, enabling use of public lands and properties while strictly respecting private rights of ownership of local residents of the territories. Thus, residents of Israeli settlements never received ownership rights to the land, which is provisionally leased to them by a government custodian pending an agreed determination of the territorial dispute.

Israel has consistently rejected the oft-heard accusation in international political bodies that its settlement policy violates the prohibition in Fourth Geneva Convention on the mass transfer of its residents into the territory. This in light of the provenance of such prohibition in the post-Second World War mass transfers of populations in Europe by the Nazis in an attempt to alter the demographic structure of the countries involved. This was made clear in the official Red Cross commentary, edited by Jean Pictet, on the sixth paragraph of the Geneva Convention article 49, regarding deportation and transfer of persons into occupied territory.

According to Pictet:

“.... It is intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race.”

The fact that the 1993-95 Oslo Accords determined that the issue of settlements will be a negotiating issue in the permanent status negotiations underlines the fact that the settlement issue has yet to be agreed upon, and is, of necessity, inherently linked to the other permanent status issues, including borders, Jerusalem, security and the like. As stated in the **Oslo Accords**:

“It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest.”

Pursuant to the 1967 Six-Day War, **U.N. Security Council Resolution 242**, adopted on Nov. 22, 1967, set out the basic framework of rights and obligations intended to lead to a solution of the Middle East

conflict. The nonbinding but key resolution, adopted under Chapter VI of the U.N. Charter dealing with the pacific settlement of disputes, affirmed inter alia the rights of all states in the area to just and lasting peace, termination of belligerency, respect for sovereignty and independence, and secure and recognized boundaries, and called for negotiations to achieve a peaceful and accepted settlement.

This resolution has constituted the basis for the subsequent peace treaties between Israel and its neighbors Egypt and Jordan. It also serves as the central pillar in the series of agreements signed between Israel and the PLO regarding the West Bank. Such negotiations proceeded over the years to develop possible models for Israel and the Palestinians to negotiate between them the rights that they respectively claim in the areas of the West Bank.

During this period, and up to the signing of the 1993-1995 Oslo Accords, Israel continued to administer the areas on the basis of the rights to which it was entitled pursuant to international law.

The third element defining Israel's rights in West Bank was the landmark 1995 [Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip](#) (Oslo 2) witnessed by the world leaders and endorsed by the U.N.

The parties agreed, pending the negotiation an agreement to determine the permanent status of the area, to divide the effective control between a Palestinian Authority established for that purpose, and Israel. In this way the Oslo Accords created a sui generis legal regime, a *lex specialis* that overrides any other, previously applicable legal framework that may have been applicable, including the Geneva Convention.

As such, the PLO, as the formal representative of the Palestinian people, formally agreed that in addition to those West Bank and Gaza Strip areas in which all powers and responsibilities for governance and administration would be transferred into the hands of the Palestinian Authority (Areas A and B and the Gaza Strip), Israel would retain powers and responsibilities in part of the area (Area C) vis-a-vis both local Palestinian residents in the area, as well as the Israeli citizens residing in settlements and villages. The parties agreed that this arrangement would remain valid pending the outcome of negotiations between them on the permanent status of the areas.

Despite attempts by the international community, through nonbinding political statements and resolutions in the U.N., to prejudge the outcome of the negotiations by claiming that the territories are "occupied Palestinian territories," there exists no such legally accepted or agreed to determination.

Similarly, the Oslo Accords did not specify the form the permanent status of the area would take—whether one state, two states, federation, confederation or otherwise. Thus, states and organizations advocating a "two-state solution" are, in fact preempting the outcome of the negotiations that have yet to take place. Any agreed solution will only emanate from negotiations between the Palestinian leadership and Israel and cannot be imposed unilaterally by U.N. resolutions, or by any international forum, or individual leaders.

Any permanent status agreement, if and when reached, will be the sole agreed upon instrument duly determining the status of the area and the respective international and bilateral rights and commitments both of Israel and the Palestinians.

Time will tell.

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| Elaine May and Mike Nichols in 1958 (Photo: NBCU Photo Bank/NBCUniversal via Getty Images via Getty Images)

SAM WASSON (*writer*): Mike [Nichols] was playing Jean the valet in a production of *Miss Julie*, and Mike was declaiming at the foot of the stage, overacting, and there in the third row was this beautiful girl staring at him with contempt. He immediately respected her for hating him. A day later he picked up the review in the newspaper, and to his incredible shock, he got a rave. [Paul] Sills, who directed the show, came up to him, and said, “Mike, I want you to meet the only other person on campus who’s as hostile as you are: Elaine May.” She looked over Mike’s shoulder at the rave and went, “Ha!” and walked off. It’s the beginning of a romantic comedy.

Then, of course, Mike was coming back from the radio station one day, and he sees Elaine on a bench in a train station reading a magazine. He goes up to her and says, “May I *seet* down?” He starts improvising as a spy, and she’s immediately there with him, and starts improvising back: “If you *veesh*.” They improvised all the way back to Elaine’s apartment.

JANET COLEMAN (*writer*): She served him a cream-cheese-and-olive sandwich—you can imagine what kind of cook she must have been. I heard they did sleep together. They did it one time, and that was it. But he might have been madly in love with her. Everyone was.

ANDREW DUNCAN (*actor*): I think it was Eugene Troobnick who said to me, “Don’t fall for her. Don’t ask her out and try to go to bed with her, because she’s a killer. She’s a ball-cutter, a castrater.” I figured from the way he talked she had done some damage to him.

ALLAUDIN MATHIEU (composer): I was both sexually attracted to Elaine and afraid of her. She was over the top, but with great conviction. The only thing to say about everything she did was, *That's Elaine*. I knew her when she was young and there was no stopping her. Turns out there was.

HEYWARD ERLICH (actor): The [Compass] theater was on the second floor of a former Chinese restaurant. It was a six- or seven-night-a-week show, unlike community theater now, which is Thursday, Friday, Saturday afternoon—there's nobody there on Monday, Tuesday, Wednesday.

ANDREW DUNCAN: Everybody pantomimed, which is unusual at first, but you get used to it. The word was "accept": accept what was said, accept what was done. We didn't wear makeup. We didn't wear costumes. You wore shorts if it was hot. You had sneakers on, and you took your shirt off onstage. Mike never did that. He was always more aware of costume. Elaine was raw and raunchy. I never saw it, but I heard that she used to go onstage without underwear—she would literally flash the audience. You could hear gasps every once in a while.

ALLAUDIN MATHIEU: I was the intermission pianist. Sometimes the crowds were pretty thin. But on the weekends, there were times when the joint was jumping. The intelligentsia of the University of Chicago came, including my professors. It was an underground hit. The bar was just a bar for working-class people, so you've also got people wandering in, wondering what the heck this was.

JANET COLEMAN: Mike came in the sort of second wave of the Compass Theatre. They were beginning to professionalize a little bit. They were importing actors from New York. I don't think all of them had that sophistication that he had. If you were from Chicago, you hadn't seen *A Streetcar Named Desire*.

JEFFREY SWEET (writer): When Shelley Berman joined the Compass, he discovered that these people actually had read all these Great Books, and was permanently mortified. Shelley did not get along terribly well with the others. They recognized that he had talent, but his ambition was too naked and his desperation was too naked. And he was also a little bit older than the others. He felt, *Here I am at this age, and I failed*. But he knew there was an opportunity here.

SAM WASSON: Shelley would always negate onstage to get a laugh. Someone would say, "Do you want to pet the bunny?" and Shelley would say, "That's not a bunny." He was the unintentional instigator of "Yes, and."

ANDREW DUNCAN: Mike hated working with him. They, of course, were fighting over Elaine. Shelley did funny stuff, but I didn't like working with him either, because every scene I ever did with him—we'd improvise one night, and the next night when we tried to repeat it, he would steal lines that I had come up with.

JOYCE PIVEN (actress): Mike was good, though he didn't excel as an actor. But he was a comic genius.

HEYWARD ERLICH: He was much more interesting in person than he was on the stage. I think his big discovery was that his genius was not in being a serious actor but in doing a form of comedy that was revolutionary at the time. It was breakthrough stuff.

JANET COLEMAN: Mike said himself, "Elaine could improvise with anybody. I could only improvise with Elaine."

LAURA PIERCE (actress): Mike said, "That was the secret of Elaine and me, that we knew all about each other—all about each other. We had an absolutely mutual frame of reference. Even if you're not that good

in the beginning—and I wasn't very good in the beginning— once you have someone who knows you that completely, you can do some very nice things onstage.” Finding your people—people you're drawn to, that you want to work with, that you connect with on some level—that was very important to him.

SAM WASSON: Their first great comedy sketch was “Teenagers.” These are two teenagers nervous about making out. You don't see a lot of comedy around young people's sexuality in 1955. Even grown-ups aren't making out. Sex is something that married people do, and they do it somehow in separate beds. No one knows what to do with sex, and here Mike and Elaine are doing it as teenagers, and they're doing it with anxiety, which means they're doing it with a degree of psychological reality that had never been seen before. It's a breakthrough in sexuality. It's a breakthrough in psychological naturalism. And it's a breakthrough in form.

JANET COLEMAN: The other actors would run back from wherever they were smoking to see Nichols and May when they took the stage. They wanted to see what they would do next.

ALLAUDIN MATHIEU: I got to sit there and watch Elaine and Mike go through their early stuff, and it was amazing, absolutely amazing. Subsequently, through Second City, I met a lot of bright people, but I never, never saw improvisation so crisp, so sparkling, and so important. It was as though I was seeing something that had never been created before created in front of my eyes, and, indeed, that's what was happening. Mike and Elaine had such extraordinary insight into and investment in each other's psyche. When they did scenes together, it was like you never saw people so naked in your life.

Incidentally, they fucked up a lot. We forget that when you're around a new sensibility or new art form being built—you forget about all the failures. However, there were some scenes that just happened. The “Teenagers” scene was one of them.

JEFFREY SWEET: A turning point happened when somebody before a show said to Mike, “Hey, I hear you guys did this great scene about two teenagers in a car last week. Are you going to do it this week?” And Elaine said, “We don't repeat scenes.” And Mike said, “Why not? Why don't we repeat them? Why don't we polish them, and make them really good?”

ANDREW DUNCAN: He was always directing the scene while he was doing it. Elaine would never do that. Her bursts were spontaneous. I always felt that in their act, she was really the driving force.

SAM WASSON: No one intended this theater to be funny. But when Mike and Elaine took off, there was nothing you could do. Sills's dream of a community theater and [David] Shepherd's dream of a political theater were now compromised by these highly verbal, highly analytical Jews who became the stars.

One day, Mike's mother called him and said, “Mike, it's your mother. Do you remember me?” and Mike was like, *Thank you, Mom, for that little Jewish nightmare*, and calls Elaine immediately to say, “Let's do this tonight.”

We look at it as a cliché now, but a mother in the 1950s was God on Earth; so was a father, by the way. The family unit was as unassailable as America. Bob Hope could always make a mother-in-law joke, that was safe, but to criticize the woman who gave you life? And the way they did it was merciless. By the end of the piece, you see that the son, far from being the victim, is actually colluding in his own infantilization. It's devastating.

ANDREW DUNCAN: Mike had a wonderful satirical tone, and he did accents—he was probably the most versatile in that department. But I always got the feeling he really wanted to be a director. I always felt that. When they left the Compass, I was amazed to find out that he and Elaine were going to do an act.

JANET COLEMAN: Unbeknown to any of their fellow players, Mike, Elaine, Del Close, and Nancy Ponder had talked about forming an improv group and going to New York. And according to Del and Nancy, they took actors' photos on a flatbed truck. They were all set to leave St. Louis and form their own company. Mike and Elaine said, "Pool your money and send us to New York. We have an appointment with this manager, Jack Rollins." They audition for Rollins, and lo and behold, they get the job. And that was the last Del and Nancy ever heard from them.

There was a book written about Del Close, and Mike told the author that the story wasn't true, Del was a chronic liar, and he made this up. Except I had it corroborated by a number of people who were there—Nancy Ponder, Del Close, Severn Darden, Ted Flicker, David Shepherd. Nancy Ponder showed me the pictures they had taken as a foursome on the flatbed truck. I think Mike didn't want to be known as treacherous. They left all these people behind, and those people began to struggle. The Compass was failing.

ANDREW DUNCAN: There was a kind of reluctance to be part of a group with Mike. It's just something I sensed. I don't think he ever felt at home in Compass. I hope it wasn't us, because everybody opened up to him.

ALLAUDIN MATHIEU: When Mike came here, he wasn't anybody. He was literally an alien, and he had to construct a self. He had to construct a way to be in the world, and I think he tried everything out through improvisation. He was the lost kid. He was the sexual supplicant. He was the snob. He was the know-it-all. He knew exactly who each guy was, and that's why it was funny. He was really searching, and he found aspects of himself.

SAM WASSON: Elaine liberated Mike's unconscious. Those improvisations could not have happened without Elaine, just like a patient-therapist, and this analogy was not lost on them, by the way. Look at how many patient-therapists they played. She was Dr. May for Mike, and a lot of the time you will see in these pieces Mike being not the person in power, but the scared, nervous one, and that was not Mike's outward persona. He came to grips with that shadow side of himself.

PETER GALLAGHER (actor): I once asked Mike, "What do you think is important about raising kids?" He said, "Well, just as long as they know that things that start out poorly don't always end poorly, and things that start out well don't always end well. That, and study improv." He felt sure that it was his experience with Elaine, and his background in improv, which gave him the facility and the confidence and the words to deal with the studios. It allowed him to think on his feet and not crumble in the face of opposition. Both my kids have now studied improv.

*Excerpted from **Life Isn't Everything**: Mike Nichols as Remembered by 150 of His Closest Friends by Ash Carter and Sam Kashner. Published by Henry Holt and Company November 12, 2019. Copyright © 2019 by Ash Carter and Sam Kashner. All rights reserved.*

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Ilham Dakhel Ali, an 18-year-old Yazidi woman, sits in the shelter she shares with her mother and youngest brother in Khanke IDP camp in Dohuk Governate, Iraqi Kurdistan, March 25, 2019. Ilham and her family were kidnapped by ISIS in 2014. She was separated from her family and sent to Syria where she was bought by a senior Saudi ISIS member and enslaved until early 2019. (Photo: Kate Geraghty/Fairfax Media via Getty Images via Getty Images)



[Israel Story](#)
Episode 45: By the River...

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Jews first arrived in what is today Iraq in the sixth century BCE, after the Babylonian King Nebuchadnezzar sacked Solomon's Temple. It was from there that Ezra and Nehemiah led returning exiles back to Jerusalem. It was there that the Babylonian Talmud was debated, compiled, and codified. And it was there, in 1941, that the Farhud—a violent pogrom—left hundreds of Baghdad's Jews dead and thousands injured.

While there were many phases in this 2,600-year-long history, Jews knew numerous prosperous periods in the land between the two rivers. They were politicians, jurists, doctors, businessmen. There was even a Jewish Miss Baghdad.

Today that community is all but gone.

In the prologue, "My Heart Is in the East," host Mishy Harman talks to [Edwin Shuker](#), whose family fled Baghdad in 1971, about his hopes for a new Golden Age for Iraqi Jews.

Act I: "You Cannot Clap With One Hand." This is a story of daring escapes, ISIS, volunteerism, and the endless human spirit. Oddly enough, it is also a story of the legacy of the Holocaust. While generations of Israeli high school students have visited concentration camps and promised—in sincere voices—"never again," a Jewish grandma from Jerusalem named Lisa Miara made "never again" the guiding principle of her life. Producer Joel Shupack brings us a tale of one fearless woman who was compelled, because of what happened to her own people less than 80 years ago, to get up and act.

[Ari Wenig](#) wrote the original music in "You Cannot Clap With One Hand." Joel Shupack arranged the music for the rest of the episode, and for parts of Act I with music from [Blue Dot Sessions](#). Shai Satran and Mishy Harman edited the story, and Sela Waisblum mixed the episode, which was recorded in Jonathan Friedlander's Quality Sound Studio in Jerusalem. The end song is a new cover we commissioned of Boney M.'s "[Rivers of Babylon](#)." It was recorded, arranged, and performed by [Shay Perry](#).

Listen to the full episode here, or [download](#) it from iTunes. You can hear all of Israel Story's episodes in English [here](#) and in Hebrew [here](#).

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